Appendix A

United States Court of Appeals
For the Ninth Circuit

Las Vegas Local Joint Executive Board of Culinary Workers and Bartenders; Culinary Workers Union, Local No. 226; and Bartenders Union, Local No. 165, Appellants, vs. Las Vegas Hacienda, Inc., and Casino Operations, Inc., Appellees.	No. 21,349

[September 27, 1967]

On Appeal from the United States District Court for the District of Nevada

Before: Barnes and Merrill, Circuit Judges, and Von Der Heydt, District Judge

Merrill, Circuit Judge:

Appellants commenced this action to compel arbitration under §301 of the Labor Management Relations Act, 29 U.S.C. §185.

For many years appellant unions have jointly bargained with a multiemployer bargaining associa-

tion of Las Vegas, Nevada, resort hotels, presently represented by the Nevada Industrial Council. Appellee Las Vegas Hacienda, Inc., is a member of that association. Appellee Casino Operations, Inc., operates the casino at the Hacienda but is not a member of the association. Appellants contend that Casino Operations was either owned, operated or substantially controlled by Hacienda and, under the terms of the collective bargaining agreement with the resort hotels,[1] was therefore a party to and bound by that agreement.

So contending appellants sought to secure compliance by Casino Operations with contract provisions respecting change girls and booth cashiers. When they were unsuccessful they requested adjustment and arbitration pursuant to the terms of the contract. Failure to secure satisfactory adjustment of the dispute, appellants brought this action to compel arbitration.

The District Court found that Casino Operations was not owned, operated or substantially controlled by Hacienda and thus was not a party to the bargaining agreement and could not be forced to submit to arbitration. Since Casino Operations employees were the subject of the dispute the court held that, although it was admittedly bound by the agreement with the union, Hacienda's obligation to submit to arbitration

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[1] "This Agreement shall cover all operations within the jurisdiction of the Union, which are now or which may during the term hereof (or any extension thereof) be owned by, operated by or substantially under the control of the Employer; the term 'Employer' shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially in control of, substantially controlled by, or substantially under the control of an employer covered by this Agreement."

was mooted by the court's resolution of the status of Casino Operations. This appeal followed.

Appellants contend that by making its determination the District Court usurped the functions of the arbitrator, passing upon the precise issue sought to be submitted to arbitration.

We disagree. Whether or not one is a party to a collective bargaining contract is, when that question is disputed, a question for the courts and not the arbitrator.[2] There was ample evidence in the record to support the ruling of the court below on that question.

Affirmed.

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[2] *Cf. John Wiley & Sons v. Livingston*, 376 U.S. 543, 547 (1964):

> "Here the question is whether Wiley, which did not itself sign the collective bargaining agreement on which the Union's claim to arbitration depends, is bound at all by the agreement's arbitration provision. * * * [J]ust as an employer has no obligation to arbitrate issues which it has not agreed to arbitrate, so, *a fortiori*, it cannot be compelled to arbitrate if an arbitration clause does not bind it at all."

The Court concluded that this question was for the courts. See also *Procter & Gamble Ind. Union v. Procter & Gamble Mfg. Co.*, 312 F.2d 181, 184 (2d Cir. 1962), *cert. denied*, 374 U.S. 830 (1963); *Livingston v. Gindoff Textile Corp.*, 191 F.Supp. 135, 137 (S.D. N.Y. 1961); *office Employees Inter. Union, Local 153 v. Ward-Garcia Corp.*, 190 F.Supp. 448, 449 (S.D.N.Y. 1961).

Appendix B

NATIONAL LABOR RELATIONS ACT

§ 185.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Appendix C

Judgment
United States Court of Appeals
For the Ninth Circuit

Las Vegas Local Joint Executive Board of Culinary Workers and Bartenders; Culinary Workers Union, Local No. 226; and Bartenders Union, Local No. 165, Appellants, vs. Las Vegas Hacienda, Inc., and Casino Operations, Inc., Appellees.	No. 21,349

Appeal from the United States District Court for the District of Nevada.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Sept. 27, 1967.